

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CALIFORNIA ENDANGERED SPECIES ACT
INCIDENTAL TAKE PERMIT
NO. 2081-2017-047-02-A1
AMENDMENT 1**

**Yuba County Water Agency
Log Cabin and Our House Diversion Dams Sediment Management Project**

CEQA FINDINGS

INTRODUCTION:

The California Department of Fish and Wildlife (CDFW) has prepared these findings to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*). CDFW is a responsible agency under CEQA with respect to the Log Cabin and Our House Diversion Dams Sediment Management Plan Project (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; CEQA Guidelines, § 15381; see also Cal. Code Regs., tit. 14, § 783.3, subd. (a).)¹ CDFW makes these findings under CEQA as part of its discretionary decision to authorize the Yuba County Water Agency (YCWA)(Permittee) to incidentally take foothill yellow-legged frogs (*Rana boylei*) (hereafter, referred to as Covered Species) during implementation of the Project. (See generally Fish & G. Code, § 2081, subd. (b); Cal. Code Regs. tit. 14, § 783.4.) The foothill yellow-legged frog is designated as a threatened species under CESA (Cal. Code Regs., tit. 14, § 670.5, subd. (b)(l)).

CDFW is a responsible agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the lead agency, the Yuba County Water Agency (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) The YCWA analyzed the environmental impacts associated with implementation of the Project in a Mitigated Negative Declaration (Log Cabin and Our House Diversion Dams Sediment Management Plan Project, SCH No. 2010129049), approved the Project on January 22, 2020. In so doing, the YCWA imposed additional mitigation measures for impacts to the Covered Species as conditions of Project approval and concluded that Project-related impacts to the Covered Species could be substantially lessened with implementation of mitigation and avoidance measures, such that the impacts would be less than significant.

The CDFW has entered into an Incidental Take Permit (ITP) Amendment with the Permittee (ITP No. 2081-2017-047-02-A1) that includes changing the Project work window; changing the expiration date of the ITP to December 2025; adding a disposal area (2A and 2B); adding the Celestial Valley Restoration Site; and changing the requirement to open the low-level outlet valve to full capacity from 96 hours, to at least 9 consecutive days when mean daily inflow is equal to or greater than 1500 cubic feet per second (cfs).

¹ The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

CEQA Findings
Log Cabin and Our House Diversion Dams Sediment Management Plan Project
Amendment No. 1
2081-2017-047-02-A1

The Project includes four locations identified in the Amendment. The first location is at the Log Cabin Diversion, which is located on National Forest Service Land within the Tahoe National Forest, on Oregon Creek, 4.3 miles upstream of the confluence with the Middle Yuba River. Township 18N, Range 8E, Section 11. Latitude 39.44402, Longitude -121.0589.

The second location is at the Our House Diversion Dam, located on National Forest Service Land within the Tahoe National Forest, on the Middle Yuba River, 12.6 miles upstream of its confluence with the North Yuba River. Township 18N, Range 8E, Section 10. Latitude 39.4115, Longitude -120.9974.

The third location, Disposal Site 2 (A)(B), is located approximately 5.1 miles northeast of North San Juan, in Yuba County, California. The site is located on privately owned property, approximately 4.7 miles from Log Cabin Diversion Dam and 6 miles from Our House Diversion Dam and is not within the Federal Energy Regulatory Commission (FERC) Project Boundary. There are 2 sub-areas at Disposal Site 2. Disposal Site 2A is located at Latitude 39.4213, Longitude -121.0667; while Disposal Site 2B is located at Latitude 39.42696, Longitude -121.0663. Both sub-areas are in Township 18N, and Range 8E, Section 15 of USGS quadrangle Camptonville.

The fourth location is the Celestial Valley Restoration Site located approximately 2.7 miles from Log Cabin Diversion Dam and 5.8 miles from Our House Diversion Dam. Celestial Valley Restoration Site is located at Latitude 39.41658, Longitude -121.06697; in Township 18N, Range 8E, Section 22 of the USGS quadrangle Camptonville.

As approved by YCWA, the Project Amendment involves the diversion and dewatering of Oregon Creek and the Yuba River; in addition, the Project includes three components at both Log Cabin and Our House Diversion Dams: 1) passage of sediment; 2) planned mechanical removal of sediment; and 3) emergency removal of sediment. The Project site is within the range of the Covered Species and is known to support individuals of the species. This Amendment increases the area of impact for and the take of the Covered Species as defined by Fish and Game Code. (Fish & G. Code, § 86.). Project implementation increases the area of impact for Covered Species by a permanent loss of 0.1 acres and a temporary loss of 0.4 acres of habitat for the Covered Species. These impacts fall within CDFW's permitting jurisdiction under CESA. (*Id.*, §§ 2080, 2081, subd. (b).)

As a responsible agency, CDFW's CEQA obligations are more limited than those of the lead agency, in that CDFW is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve. Thus, while CDFW must consider the environmental effects of the Project as set forth in YCWA's prior analysis, Mitigated Negative Declaration (MND), CDFW has the responsibility to mitigate or avoid only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because CDFW's exercise of discretion is limited to issuance of an Incidental Take Permit (ITP) for the Project, CDFW is responsible for considering only the environmental effects that fall within its permitting authority under

CEQA Findings
Log Cabin and Our House Diversion Dams Sediment Management Plan Project
Amendment No. 1
2081-2017-047-02-A1

CESA. (See generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 935-941.) Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the MND/EIR fully complies with CEQA. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1130.)

CDFW's more limited obligations as a responsible agency affect the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each public agency that approves a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment. (Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 15091, subd. (a); see also Pub. Resources Code, § 21068 (significant effect on the environment defined); CEQA Guidelines, § 15382.) Because the Negative Declaration for the Project identifies potentially significant impacts on the Covered Species, CDFW adopts the findings set forth below to fulfill its obligations as a responsible agency under CEQA. (CEQA Guidelines, § 15096, subd. (h); *Resource Defense Fund. V. Local Agency Formation Comm. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 896-898.)

FINDINGS:

CDFW has considered the MND adopted by the YCWA as the lead agency for the Project. CDFW finds that the mitigation measures imposed as conditions of Project approval by YCWA, along with the additional mitigation measures and Conditions of Approval set forth in CDFW's ITP Amendment for the Project, will ensure that all Project-related impacts on the Covered Species are mitigated to below a level of significance under CEQA.

CDFW finds that issuance of the ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the conditions of Project approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of the ITP Amendment, will avoid or reduce such potential effects to below a level of significance.

The following measures and others set forth in CDFW's ITP Amendment for the Project will avoid to the extent feasible and mitigate to below a level of significance all Project-related impacts on the Covered Species:

- A. A Designated Biologist who is knowledgeable and experienced in the biology and natural history of the Covered Species will monitor construction and/or surface-disturbing activities to minimize habitat disturbance and take of individual Covered Species. The Designated Biologist will have the authority to stop construction and/or

CEQA Findings
Log Cabin and Our House Diversion Dams Sediment Management Plan Project
Amendment No. 1
2081-2017-047-02-A1

surface-disturbing activities and/or order any reasonable measure to avoid take of the Covered Species.

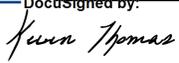
- B. This Amendment will change the work window within Covered Species habitat for the following Covered Activities:
 - For Sediment Passage- October 1 to March 21 (if approved by the FERC Agency Partners)
- C. This Amendment will add a mitigation effort to remove additional predatory species observed within Oregon Creek and the Middle Fork Yuba River until December 2025.
- D. This Amendment will add Visual Encounter Surveys (VES) for Covered Species at two locations: Disposal Site 3 and the Celestial Valley Restoration Site.
- E. This Amendment will require an additional security for mitigation, through a letter of credit in the amount of \$199,430.
- F. This Amendment will require additional annual monitoring reports to be submitted to CDFW until December 2025.

CDFW finds that the Mitigation Monitoring and Reporting Program in Attachment 2 of CDFW's ITP for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress annually in implementing those measures for review by CDFW staff.

The Mitigation Monitoring and Reporting Program is adopted.

The Project is approved.

DATE: 10/1/2020

By: 
AP00A9G57468145
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North Central Region
DEPARTMENT OF FISH AND WILDLIFE